



alleges that it has “full ownership of the Loan and the Personal Guaranty.” *See* Complaint [Doc. # 1], ¶ 13.

Agency and Apostol defaulted under the Loan and Personal Guaranty. Bank filed this lawsuit asserting a breach of contract claim against Agency in connection with the Loan and a breach of guaranty claim against Apostol individually. Defendants *pro se* have moved to dismiss.

The Court notes first that Agency is a corporation but is not represented by a licensed attorney. Corporations may not appear in federal court without an attorney. *See, e.g., Memon v. Allied Domecq QSR*, 385 F.3d 871, 873 (5th Cir. 2004) (citing *Rowland v. Cal. Men’s Colony*, 506 U.S. 194, 202 (1993); *Southwest Express Co. v. ICC*, 670 F.2d 53, 55 (5th Cir. 1982)). Consequently, Agency cannot appear without a licensed attorney and Apostol, who is not a licensed attorney, cannot represent Agency.

As a second matter, the Court notes that the Motion to Dismiss was filed on November 4, 2010, well after Defendants filed an Answer [Doc. # 6] on June 2, 2010. A Motion to Dismiss under Rule 12(b)(6) must be filed before a responsive pleading, if allowed, is filed. *See* FED. R. CIV. P. 12(b). As a result, the Motion to Dismiss is untimely.

On the merits of the Motion to Dismiss, the Court concludes that Bank has adequately pled its claims against Defendants. A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure is viewed with disfavor and is rarely granted. *Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 725 (5th Cir. 2002). The complaint must be liberally construed in favor of the plaintiff, and all facts pleaded in the complaint must be taken as true. *Id.* The complaint must, however, contain sufficient factual allegations, as opposed to legal conclusions, to state a claim for relief that is “plausible on its face.” *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). When there are well-pleaded factual allegations, a court should presume they are true, even if doubtful, and then determine whether they plausibly give rise to an entitlement to relief. *Id.* at 1950.

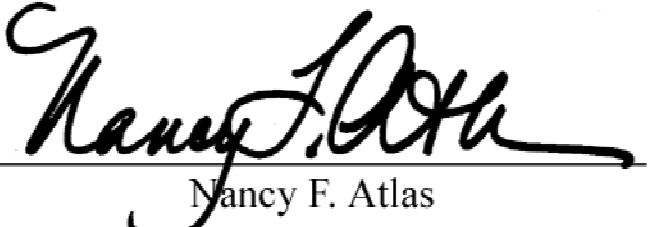
Bank has adequately alleged that it has full ownership of the Loan and the Personal Guaranty. Bank alleges that Agency entered into the Loan, which is in default. Bank adequately alleges also that Apostol guaranteed Agency’s payment obligations under the Loan and defaulted on the guaranty. These allegations are sufficient to withstand a motion to dismiss. Apostol’s challenge to the Bank’s ownership of the Loan and Personal Guaranty, Apostol’s assertion that BCC made certain misrepresentations in connection with the Loan and Personal Guaranty, and Apostol’s position that she did not sign the Personal Guaranty in her individual

capacity are matters that may be addressed, if appropriate, in a motion for summary judgment to be filed after the completion of discovery. Accordingly, it is hereby

**ORDERED** that Defendants' Motion to Dismiss [Doc. # 12] is **DENIED**. It is further

**ORDERED** that the Answer filed by Apostol on Agency's behalf is **STRICKEN** as to Agency. Agency shall advise the Court in writing by **January 14, 2011**, whether it has retained an attorney to represent it in this lawsuit. If there is no licensed attorney to represent Agency by that date, Bank may request default judgment against Agency.

SIGNED at Houston, Texas, this 9<sup>th</sup> day of **December, 2010**.

  
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Nancy F. Atlas  
United States District Judge